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LAW OFFICES  
**KOTEEN & NAFTALIN, L.L.P.**

1150 CONNECTICUT AVENUE  
WASHINGTON, D.C. 20036

NOV 10 1997

FEDERAL COMMUNICATIONS COMMISSION TELEPHONE  
OFFICE OF THE SECRETARY (202) 467-5700  
TELECOPY  
(202) 467-5915

BERNARD KOTEEN\*  
ALAN Y. NAFTALIN  
ARTHUR B. GOODKIND  
GEORGE Y. WHEELER  
MARGOT SMILEY HUMPHREY  
PETER M. CONNOLLY  
CHARLES R. NAFTALIN  
GREGORY C. STAPLE  
R. EDWARD PRICE  
\* SENIOR COUNSEL

November 10, 1997

DOCKET FILE COPY ORIGINAL

Hand Delivered

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

**EMERGENCY REQUEST**

Re: MM Docket No. 97-122; File Nos. BRFT-970129YC, BRFT-970129YD

Dear Ms. Salas:

Transmitted herewith, on behalf of Gerard A. Turro, are an original and six copies of his Emergency Motion for Temporary Protective Order in the above-referenced matter.

To expedite this emergency motion, it has been served by fax transmission to all of the parties and the Presiding Judge before 9:30 am this morning and delivered to the Secretary's office at approximately 9:30 am.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,



Charles R. Naftalin

Enclosures

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re	)	
	)	
GERARD A. TURRO	)	MM Docket No. 97-122
	)	
For Renewal of License	)	File Nos. BRFT-970129YC
For FM Translator Stations	)	BRFT-970129YD
W276AQ(FM), Fort Lee, NJ, and	)	
W232AL(FM), Pomona, NY	)	
	)	
MONTICELLO MOUNTAINTOP	)	
BROADCASTING, INC.	)	
	)	
Order to Show Cause Why the	)	
Construction Permit for FM Radio	)	
Station WJUX(FM), Monticello, NY,	)	
Should Not Be Revoked	)	
To: Honorable Arthur I. Steinberg		
Administrative Law Judge		

**EMERGENCY MOTION FOR TEMPORARY PROTECTIVE ORDER**

Gerard A. Turro, by his attorneys, hereby requests an emergency temporary protective order to prevent potentially irreparable harm to his defense in this proceeding, at least until the Presiding Judge has been able to rule upon the pending Joint Motion for Protective Order, filed November 4, 1997, or until a prehearing conference may be held to resolve the matter. In either event, the Protective Order requested today on an emergency basis would be necessary only for the brief period of time required to rule upon the pending Joint Motion, and therefore would cause no material harm to any parties. Copies of this Emergency Motion are being served by fax as rapidly as possible, and no later than 9:30 am this morning.

As described in the Joint Motion, Mr. Turro and Monticello Mountaintop Broadcasting,

Inc. ("MMBI") requested that the direct case witnesses of the Mass Media Bureau ("Bureau") and Universal Broadcasting of New York, Inc. ("Universal") be excluded from reviewing, or otherwise obtaining any knowledge of, the direct cases of Mr. Turro and MMBI which are due to be filed today.<sup>1</sup> As explained in the Joint Motion, such a Protective Order is entirely warranted and authorized by Rule 615 of the Federal Rules of Evidence, and further, is necessary to prevent potentially irreparable harm to the defenses of Mr. Turro and MMBI.

As of this writing, neither the Bureau nor Universal have submitted a response to the Joint Motion.

Subsequent to the filing of the Joint Motion, counsel to the parties discussed entering into an agreement and stipulation which would have resolved the situation and would have permitted Mr. Turro and MMBI to withdraw their motion. Based upon those discussions, counsel to Mr. Turro drafted and circulated by fax a proposed agreement among counsel on November 6, 1997.

Unfortunately, the parties have not reached agreement on this important matter. Therefore, we feel compelled to take the unusual step of seeking this emergency order or face the prospect of irreparable harm to our defense. If the Bureau and Universal witnesses are not today ordered to be excluded from review or knowledge of the direct cases of Mr. Turro and MMBI, then there is the real prospect that the legal right clearly set forth under Federal Rules of

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<sup>1</sup>The Joint Motion requested that the following witnesses be excluded from any knowledge of Mr. Turro's and MMBI's direct case exhibits: Jules Cohen, Wilson La Follette, Vincent D. Luna, William Gaghan and Serge Loginow, Jr. During discussions, counsel to Mr. Turro agreed to permit the Bureau and Universal experts, Mr. Cohen and Mr. La Follette, to review the case exhibits of Mr. Turro's experts, who are Herman E. Hurst, Jr. and John Hidle. Mr. Turro continues to agree to this exception to the request for exclusion for expert testimony only.

Evidence 615 will be lost without recourse, to the considerable detriment to the moving parties. Based upon discussions on November 7, 1997, we understand that counsel to Universal does not object to the issuance of the temporary protective order sought here.

Therefore, we urgently request that the emergency protective order requested here be granted immediately, before distribution of the direct case exhibits of Mr. Turro and MMBI toward the close of business today, and that the Joint Motion be resolved as expeditiously as possible thereafter.

Respectfully submitted,

GERARD A. TURRO

By: *Alan Y. Naftalin (CR/N)*  
/s/ Alan Y. Naftalin

By: *Charles R. Naftalin*  
/s/ Charles R. Naftalin

Koteen & Naftalin, L.L.P.  
1150 Connecticut Avenue, N.W.  
Washington, DC 20036  
(202) 467-5700

November 10, 1997

His Attorneys

**CERTIFICATE OF SERVICE**

I, Barbara Frank, a secretary in the law offices of Koteen & Naftalin, L.L.P., hereby certify that true copies of the foregoing "EMERGENCY MOTION FOR TEMPORARY PROTECTIVE ORDER" have been served upon the following by facsimile before 9 a.m. this 10th day of November 1997:

The Honorable Arthur I. Steinberg  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, N.W., Room 228  
Washington, D.C. 20554


Alan Aronowitz, Esq.  
Hearing Branch  
Enforcement Division  
Federal Communications Commission  
2025 M Street, N.W., Room 7212  
Washington, D.C. 20554

Stephen Barone  
Complaints and Investigations Branch  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N.W., Room 8210  
Washington, D.C. 20554

Suzan B. Friedman  
Federal Communications Commission  
2025 M Street, N.W., Room 8210  
Washington, D.C. 20554

James P. Riley, Esq.  
Fletcher, Heald & Hildreth, P.L.C.  
1300 North 17th Street  
11th Floor  
Rosslyn, VA 22209

Roy R. Russo, Esq.  
Richard A. Helmick, Esq.  
Cohn and Marks  
1333 New Hampshire Avenue  
Suite 600  
Washington, D.C. 20036

  
/s/ Barbara Frank  
Barbara Frank